

**Introduced by Senator Nielsen**

February 21, 2014

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An act to amend Sections 1367, 1369.1, 1370.5, and 1375.5 of, and to add Sections 1368.2, 1370.02, and 1370.03 to, the Penal Code relating to crimes.

**LEGISLATIVE COUNSEL'S DIGEST**

SB 1412, as introduced, Nielsen. Criminal proceedings: mentally incompetent offenders.

Existing law prohibits a person from being tried or adjudged to punishment while that person is mentally incompetent. Existing law establishes a process by which a defendant's mental competency is evaluated and by which the defendant receives treatment, including, if applicable antipsychotic medication, with the goal of returning the defendant to competency. Existing law credits time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the term of any imprisonment for which the defendant is sentenced.

This bill would, similarly, prohibit a person from having his or her postrelease community supervision or mandatory supervision revoked while that person is mentally incompetent. The bill would establish a process by which the person's mental competency is evaluated and by which the defendant receives treatment, including, if applicable, antipsychotic medication, with the goal of returning the person to competency. This bill would credit time spent by a defendant in a state hospital or other facility as a result of commitment during the process toward the period of revocation or the remaining mandatory supervision term that was suspended. By increasing the duties of local officials,

including the county mental health director, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1367 of the Penal Code is amended to  
2 read:

3 1367. (a) A person cannot be tried or adjudged to punishment  
4 *or have his or her postrelease community supervision or mandatory*  
5 *supervision revoked* while that person is mentally incompetent. A  
6 defendant is mentally incompetent for purposes of this chapter if,  
7 as a result of mental disorder or developmental disability, the  
8 defendant is unable to understand the nature of the criminal  
9 proceedings or to assist counsel in the conduct of a defense in a  
10 rational manner.

11 (b) Section 1370 shall apply to a person who is charged with a  
12 felony and is incompetent as a result of a mental disorder. Sections  
13 1367.1 and 1370.01 shall apply to a person who is charged with a  
14 misdemeanor or misdemeanors only, and the judge finds reason  
15 to believe that the defendant is mentally disordered, and may, as  
16 a result of the mental disorder, be incompetent to stand trial.  
17 Section 1370.1 shall apply to a person who is incompetent as a  
18 result of a developmental disability and shall apply to a person  
19 who is incompetent as a result of a mental disorder, but is also  
20 developmentally disabled. *Section 1370.02 shall apply to a person*  
21 *whose postrelease community supervision has been revoked.*  
22 *Section 1370.03 shall apply to a person whose mandatory*  
23 *supervision has been revoked.*

24 SEC. 2. Section 1368.2 is added to the Penal Code, to read:

25 1368.2. (a) If, during the pendency of a revocation of  
26 postrelease community supervision or mandatory supervision, a

doubt arises in the mind of the judge as to the mental competence of the offender, the judge shall state that doubt in the record and inquire of the attorney for the offender whether, in the opinion of the attorney, the offender is mentally competent. If the offender is not represented by counsel, the court shall appoint counsel. At the request of the offender or his or her counsel or upon its own motion, the court shall recess the proceedings for as long as may be reasonably necessary to permit counsel to confer with the offender and to form an opinion as to the mental competence of the offender at that point in time.

(b) If counsel informs the court that he or she believes the offender is or may be mentally incompetent, the court shall order that the question of the offender's mental competence be determined in a hearing held pursuant to Section 1369. If counsel informs the court that he or she believes the offender is mentally competent, the court may nevertheless order a hearing. The hearing shall be held in the superior court.

(c) When an order for a hearing into the present mental competence of the offender has been issued, all revocation proceedings shall be suspended until the question of the present mental competence of the offender has been determined.

SEC. 3. Section 1369.1 of the Penal Code is amended to read:

1369.1. (a) As used in this chapter, "treatment facility" includes a county jail. Upon the concurrence of the county board of supervisors, the county mental health director, and the county sheriff, the jail may be designated to provide medically approved medication to defendants found to be mentally incompetent and unable to provide informed consent due to a mental disorder, pursuant to this chapter. In the case of Madera, Napa, and Santa Clara Counties, the concurrence shall be with the board of supervisors, the county mental health director, and the county sheriff or the chief of corrections. The provisions of Sections 1370 and 1370.01 shall apply to antipsychotic medications provided in a county jail, provided, however, that the maximum period of time a defendant may be treated in a treatment facility pursuant to this section shall not exceed six months. *The provisions of Section 1370.02 shall apply to antipsychotic medications provided to a person in a county jail pending revocation of postrelease community supervision, provided, however, that the maximum period of time a defendant may be treated in a treatment facility*

1 *pursuant to this section shall not exceed one year. The provisions*  
2 *of Section 1370.03 shall apply to antipsychotic medications*  
3 *provided to a person in a county jail pending revocation of*  
4 *mandatory supervision, provided, however, that the maximum*  
5 *period of time a defendant may be treated in a treatment facility*  
6 *pursuant to this section shall not exceed the remaining period of*  
7 *mandatory supervision imposed pursuant to subparagraph (B) of*  
8 *paragraph (5) of subdivision (h) of Section 1170.*

9 (b) This section does not abrogate or limit any ~~provision of law~~  
10 enacted to ensure the due process rights set forth in *Sell v. United*  
11 *States* (2003) 539 U.S. 166.

12 (c) This section shall remain in effect only until January 1, 2016,  
13 and as of that date is repealed, unless a later enacted statute, that  
14 is enacted before January 1, 2016, deletes or extends that date.

15 SEC. 4. Section 1370.02 is added to the Penal Code, to read:

16 1370.02. (a) (1) If the offender is found mentally competent,  
17 the postrelease community supervision revocation proceedings  
18 shall resume. If the offender is found mentally incompetent, the  
19 revocation proceedings shall be suspended until the person becomes  
20 mentally competent, and the court shall order that, in the meantime,  
21 the offender be delivered by the sheriff to an available public or  
22 private treatment facility, approved by the county mental health  
23 director, that will promote the offender's speedy restoration to  
24 mental competence, or placed on outpatient status as specified in  
25 this section. Upon the filing of a certificate of restoration to  
26 competence, the offender shall be returned to court in accordance  
27 with Section 1372. The court shall transmit a copy of its order to  
28 the county mental health director or his or her designee.

29 (2) Prior to making the order directing that the offender be  
30 confined in a treatment facility or placed on outpatient status, the  
31 court shall do all of the following:

32 (A) Order the county mental health director, or his or her  
33 designee, to evaluate the offender and to submit to the court within  
34 15 business days of the order a written recommendation as to  
35 whether the offender should be required to undergo outpatient  
36 treatment or committed to a treatment facility. A person shall not  
37 be admitted to a treatment facility or placed on outpatient status  
38 under this section without having been evaluated by the county  
39 mental health director or his or her designee. A person shall not  
40 be admitted to a state hospital under this section unless the county

1 mental health director finds that there is no less restrictive  
2 appropriate placement available and the county mental health  
3 director has a contract with the State Department of State Hospitals  
4 for these placements.

5 (B) Hear and determine whether the offender, with advice of  
6 his or her counsel, consents to the administration of antipsychotic  
7 medication.

8 (i) If the offender, with advice of his or her counsel, consents  
9 to the administration of antipsychotic medication, the court order  
10 of commitment shall include confirmation that antipsychotic  
11 medication may be given to the offender as prescribed by a treating  
12 psychiatrist. The commitment order shall also indicate that, if the  
13 offender withdraws consent for antipsychotic medication after the  
14 treating psychiatrist complies with the provisions of subparagraph  
15 (C), the offender shall be returned to court for a hearing in  
16 accordance with this subdivision regarding whether antipsychotic  
17 medication shall be administered involuntarily.

18 (ii) If the offender does not consent to the administration of  
19 antipsychotic medication, the court shall hear and determine  
20 whether any of the following are true:

21 (I) The offender lacks capacity to make decisions regarding  
22 antipsychotic medication, the offender's mental disorder requires  
23 medical treatment with antipsychotic medication, and, if the  
24 offender's mental disorder is not treated with antipsychotic  
25 medication, it is probable that serious harm to the physical or  
26 mental health of the patient will result. Probability of serious harm  
27 to the physical or mental health of the offender requires evidence  
28 that the offender is presently suffering adverse effects to his or her  
29 physical or mental health or the offender has previously suffered  
30 these effects as a result of a mental disorder and his or her condition  
31 is substantially deteriorating. The fact that an offender has a  
32 diagnosis of a mental disorder does not, in itself, establish  
33 probability of serious harm to the physical or mental health of the  
34 offender.

35 (II) The offender is a danger to others, in that the offender has  
36 inflicted, attempted to inflict, or made a serious threat of inflicting  
37 substantial physical harm on another while in custody, or the  
38 offender had inflicted, attempted to inflict, or made a serious threat  
39 of inflicting substantial physical harm on another that resulted in  
40 his or her being taken into custody, and the offender presents, as

1 a result of mental disorder or mental defect, a demonstrated danger  
2 of inflicting substantial physical harm on others. Demonstrated  
3 danger may be based on an assessment of the offender's present  
4 mental condition, including a consideration of past behavior of the  
5 offender within six years prior to the time the offender last  
6 attempted to inflict, inflicted, or threatened to inflict substantial  
7 physical harm on another, and other relevant evidence.

8 (iii) If the court finds any of the conditions described in clause  
9 (ii) to be true, the court shall issue an order authorizing the  
10 treatment facility to involuntarily administer antipsychotic  
11 medication to the offender when and as prescribed by the offender's  
12 treating psychiatrist.

13 (iv) In all cases, the treating hospital, facility, or program may  
14 administer medically appropriate antipsychotic medication  
15 prescribed by a psychiatrist in an emergency as described in  
16 subdivision (m) of Section 5008 of the Welfare and Institutions  
17 Code.

18 (v) A report made pursuant to subdivision (b) shall include a  
19 description of any antipsychotic medication administered to the  
20 offender and its effects and side effects, including effects on the  
21 offender's appearance or behavior that would affect the offender's  
22 ability to understand the nature of the criminal proceedings or to  
23 assist counsel in the conduct of a defense in a reasonable manner.  
24 During the time the offender is confined in a state hospital or other  
25 treatment facility or placed on outpatient status, either the offender  
26 or the people may request that the court review an order made  
27 pursuant to this subdivision. The offender, to the same extent  
28 enjoyed by other patients in the state hospital or other treatment  
29 facility, shall have the right to contact the Patients' Rights  
30 Advocate regarding his or her rights under this section.

31 (C) If the offender consented to antipsychotic medication as  
32 described in clause (i) of subparagraph (B), but subsequently  
33 withdraws his or her consent, or, if involuntary antipsychotic  
34 medication was not ordered pursuant to clause (ii) of subparagraph  
35 (B), and the treating psychiatrist determines that antipsychotic  
36 medication has become medically necessary and appropriate, the  
37 treating psychiatrist shall make efforts to obtain informed consent  
38 from the offender for antipsychotic medication. If informed consent  
39 is not obtained from the offender, and the treating psychiatrist is  
40 of the opinion that the offender lacks capacity to make decisions

1 regarding antipsychotic medication as specified in subclause (I)  
2 of clause (ii) of subparagraph (B), or that the offender is a danger  
3 to others as specified in subclause (II) of clause (ii) of subparagraph  
4 (B), the committing court shall be notified of this, including an  
5 assessment of the current mental status of the offender and the  
6 opinion of the treating psychiatrist that involuntary antipsychotic  
7 medication has become medically necessary and appropriate. The  
8 court shall provide copies of the report to the prosecuting attorney  
9 and to the attorney representing the offender and shall set a hearing  
10 to determine whether involuntary antipsychotic medication should  
11 be ordered.

12 (3) When the court, after considering the placement  
13 recommendation of the county mental health director required in  
14 paragraph (2), orders that the offender be confined in a public or  
15 private treatment facility, the court shall provide copies of the  
16 following documents, which shall be taken with the offender to  
17 the treatment facility where the offender is to be confined:

18 (A) The commitment order, including a specification of the  
19 charges.

20 (B) A computation or statement setting forth the maximum term  
21 of commitment in accordance with subdivision (c).

22 (C) A computation or statement setting forth the amount of  
23 credit for time served, if any, to be deducted from the maximum  
24 term of commitment.

25 (D) State summary criminal history information.

26 (E) Arrest reports prepared by the police department or other  
27 law enforcement agency.

28 (F) Court-ordered psychiatric examination or evaluation reports.

29 (G) The county mental health director's placement  
30 recommendation report.

31 (4) A person subject to commitment pursuant to this section  
32 may be placed on outpatient status under the supervision of the  
33 county mental health director or his or her designee by order of  
34 the court in accordance with the procedures contained in Title 15  
35 (commencing with Section 1600) except that where the term  
36 "community program director" appears the term "county mental  
37 health director" shall be substituted.

38 (5) (A) If the offender is committed or transferred to a public  
39 or private treatment facility approved by the county mental health  
40 director, the court may, upon receiving the written recommendation

1 of the county mental health director, transfer the offender to another  
2 public or private treatment facility approved by the county mental  
3 health director. In the event of dismissal of the revocation  
4 proceedings before the offender recovers competence, the person  
5 shall be subject to the applicable provisions of Part 1 (commencing  
6 with Section 5000) of Division 5 of the Welfare and Institutions  
7 Code. Where either the offender or the prosecutor chooses to  
8 contest the order of transfer, a petition may be filed in the court  
9 for a hearing, which shall be held if the court determines that  
10 sufficient grounds exist. At the hearing, the prosecuting attorney  
11 or the offender may present evidence bearing on the order of  
12 transfer. The court shall use the same standards as are used in  
13 conducting probation revocation hearings pursuant to Section  
14 1203.2.

15 (B) Prior to making an order for transfer under this paragraph,  
16 the court shall notify the offender, the attorney of record for the  
17 offender, the prosecuting attorney, and the county mental health  
18 director or his or her designee.

19 (b) (1) Within 90 days of a commitment made pursuant to  
20 subdivision (a), the medical director of the treatment facility to  
21 which the offender is confined shall make a written report to the  
22 court and the county mental health director or his or her designee,  
23 concerning the offender's progress toward recovery of mental  
24 competence.

25 (2) Where the offender is on outpatient status, the outpatient  
26 treatment staff shall make a written report to the county mental  
27 health director concerning the offender's progress toward recovery  
28 of mental competence. Within 90 days of placement on outpatient  
29 status, the county mental health director shall report to the court  
30 on this matter.

31 (3) If the offender has not recovered mental competence, but  
32 the report discloses a substantial likelihood that the offender will  
33 regain mental competence in the foreseeable future, the offender  
34 shall remain in the treatment facility or on outpatient status.  
35 Thereafter, at six-month intervals or until the offender becomes  
36 mentally competent, reporting shall be as follows:

37 (A) Where the offender is confined in a treatment facility, the  
38 medical director of the hospital or person in charge of the facility  
39 shall report in writing to the court and the county mental health

1 director or a designee regarding the offender's progress toward  
2 recovery of mental competence.

3 (B) Where the offender is on outpatient status, after the initial  
4 90-day report, the outpatient treatment staff shall report to the  
5 county mental health director on the offender's progress toward  
6 recovery, and the county mental health director shall report to the  
7 court on this matter at six-month intervals.

8 (4) A copy of the reports required pursuant to paragraph (3)  
9 shall be provided to the prosecutor and defense counsel by the  
10 court.

11 (5) If the report indicates that there is no substantial likelihood  
12 that the offender will regain mental competence in the foreseeable  
13 future, the committing court shall order the offender to be returned  
14 to the court for proceedings pursuant to paragraph (2) of  
15 subdivision (c). The court shall transmit a copy of its order to the  
16 county mental health director or his or her designee.

17 (c) (1) If, at the end of one year from the date of commitment,  
18 the offender has not recovered mental competence, the offender  
19 shall be returned to the committing court. The court shall notify  
20 the county mental health director or his or her designee of the  
21 return and of any resulting court orders.

22 (2) Whenever an offender is returned to the court pursuant to  
23 subdivision (b) or paragraph (1) of this subdivision and it appears  
24 to the court that the offender is gravely disabled, as defined in  
25 subparagraph (A) of paragraph (1) of subdivision (h) of Section  
26 5008 of the Welfare and Institutions Code, the court shall order  
27 the conservatorship investigator of the county of commitment of  
28 the offender to initiate conservatorship proceedings for the offender  
29 pursuant to Chapter 3 (commencing with Section 5350) of Part 1  
30 of Division 5 of the Welfare and Institutions Code. Hearings  
31 required in the conservatorship proceedings shall be held in the  
32 superior court in the county that ordered the commitment. The  
33 court shall transmit a copy of the order directing initiation of  
34 conservatorship proceedings to the county mental health director  
35 or his or her designee and shall notify the county mental health  
36 director or his or her designee of the outcome of the proceedings.

37 (d) The revocation petition remains subject to dismissal. If the  
38 revocation petition is dismissed, the court shall transmit a copy of  
39 the order of dismissal to the county mental health director or his  
40 or her designee.

1 (e) If the petition is dismissed, the offender shall be released  
2 from commitment ordered pursuant to this section, but without  
3 prejudice to the initiation of proceedings that may be appropriate  
4 under Part 1 (commencing with Section 5000) of Division 5 of the  
5 Welfare and Institutions Code.

6 SEC. 5. Section 1370.03 is added to the Penal Code, to read:

7 1370.03. (a) If the offender is found mentally competent, the  
8 mandatory supervision revocation proceedings shall resume. If the  
9 offender is found mentally incompetent, the revocation proceedings  
10 shall be suspended until the person becomes mentally competent,  
11 and the court shall order the commencement of the treatment and  
12 determination process specified in subdivisions (a) and (b) of  
13 Section 1370.02.

14 (b) If, at the end of the maximum term of commitment imposed  
15 at the original sentencing hearing pursuant to subdivision (h) of  
16 Section 1170 of the Penal Code, the offender has not recovered  
17 mental competence, the offender shall be returned to the  
18 committing court. The court shall notify the county mental health  
19 director or his or her designee of the return and of any resulting  
20 court orders.

21 (c) Whenever an offender is returned to the court without  
22 recovering mental competence or upon a finding that it is unlikely  
23 that the person will regain mental competence pursuant to  
24 paragraph (5) of subdivision (b) of Section 1370.02, and it appears  
25 to the court that the offender is gravely disabled, as defined in  
26 subparagraph (A) of paragraph (1) of subdivision (h) of Section  
27 5008 of the Welfare and Institutions Code, the court shall order  
28 the conservatorship investigator of the county of commitment of  
29 the offender to initiate conservatorship proceedings for the offender  
30 pursuant to Chapter 3 (commencing with Section 5350) of Part 1  
31 of Division 5 of the Welfare and Institutions Code. Hearings  
32 required in the conservatorship proceedings shall be held in the  
33 superior court in the county that ordered the commitment. The  
34 court shall transmit a copy of the order directing initiation of  
35 conservatorship proceedings to the county mental health director  
36 or his or her designee and shall notify the county mental health  
37 director or his or her designee of the outcome of the proceedings.

38 (d) If the offender completes the full term originally imposed,  
39 the offender shall be released from any commitment ordered under  
40 this section, but without prejudice to the initiation of any

1 proceedings which may be appropriate under Part 1 (commencing  
2 with Section 5000) of Division 5 of the Welfare and Institutions  
3 Code.

4 SEC. 6. Section 1370.5 of the Penal Code is amended to read:

5 1370.5. (a) ~~Every~~ A person committed to a state hospital or  
6 other public or private mental health facility pursuant to the  
7 provisions of Section 1370, 1370.01, 1370.02, 1370.03, or 1370.1,  
8 who escapes from or who escapes while being conveyed to or from  
9 a state hospital or facility, is punishable by imprisonment in ~~the a~~  
10 county jail not to exceed one year or in the state prison for a  
11 determinate term of one year and one day. The term of  
12 imprisonment imposed pursuant to this section shall be served  
13 consecutively to any other sentence or commitment.

14 (b) The medical director or person in charge of a state hospital  
15 or other public or private mental health facility to which a person  
16 has been committed pursuant to the provisions of Section 1370,  
17 1370.01, 1370.02, 1370.03, or 1370.1 shall promptly notify the  
18 chief of police of the city in which the hospital or facility is located,  
19 or the sheriff of the county if the hospital or facility is located in  
20 an unincorporated area, of the escape of the person, and shall  
21 request the assistance of the chief of police or sheriff in  
22 apprehending the person, and shall within 48 hours of the escape  
23 of the person orally notify the court that made the commitment,  
24 the prosecutor in the case, and the Department of Justice of the  
25 escape.

26 SEC. 7. Section 1375.5 of the Penal Code is amended to read:

27 1375.5. (a) Time spent by a defendant in a hospital or other  
28 facility as a result of a commitment therein as a mentally  
29 incompetent pursuant to this chapter shall be credited on the term  
30 of ~~any~~ imprisonment, if any, for which the defendant is sentenced  
31 in the criminal case which was suspended pursuant to Section 1370  
32 or 1370.1.

33 (b) *Time spent by an offender in a hospital or other facility as*  
34 *a result of a commitment as a mentally incompetent pursuant to*  
35 *Section 1370.02 or 1370.03 shall be credited toward any period*  
36 *of revocation or remaining mandatory supervision term that was*  
37 *suspended.*

38 ~~As~~

1       (c) As used in this section, “time spent in a hospital or other  
2 facility” includes days a defendant is treated as an outpatient  
3 pursuant to Title 15 (commencing with Section 1600) of Part 2.

4       SEC. 8. If the Commission on State Mandates determines that  
5 this act contains costs mandated by the state, reimbursement to  
6 local agencies and school districts for those costs shall be made  
7 pursuant to Part 7 (commencing with Section 17500) of Division  
8 4 of Title 2 of the Government Code.